IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5114 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASSOCIATED PETROLEUM CORPORATION

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner No. 1

MR KL PANDYA, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/04/2004

ORAL JUDGEMENT

1. The petitioner is a partnership firm engaged in the business of sale of petroleum products at Ahmedabad. The Officers of the Food & Civil Supplies Department and Controller of Food & Civil Supplies inspected the petrol pump of the petitioner on 12.7.1994 and a seizure order was passed on the very same day whereby approximately 11500 litres of petrol worth about Rs.2 lacs were seized. Thereafter by order dated 12th December 1994 the

respondent authorities ordered to confiscate the petrol worth Rs.40000/- and by order dated 28th February 1995 the deposit of Rs.250/- of the petitioner out of the total deposit of Rs.750/- was ordered to be confiscated.

2. Against the order of 28th February 1995 the petitioner filed an appeal before the Controller of Food & Civil Supplies which came to be dismissed by order dated 7th September 1995. Against the said decision the petitioner filed Revision Application No.117-A/95 before the State Government and against the order dated 12th December 1994 the petitioner directly preferred Appeal no.50/95 before the State Government. The revisional authority by order dated 11th June 1996 allowed the revision application and partly allowed the appeal No.50/95 whereby the order dated 12th December 1995 was modified to the effect that instead of petrol worth Rs.40000/-, petrol worth Rs.5000/- was ordered to be confiscated. Hence the present petition.

3. Mr. Tushar Mehta, learned cousnel for the petitioner contended that the deficit of the stock which was found by both the authorities is permissible in view of the Government Circular dated 7th October 1993 and if those guidelines are accepted, then the deficit found at the time of inspection in the petrol pump is within the permissible limit. He further submitted that the aforesaid contention has been accepted by the Deputy Secretary in his order dated 11th June 2002 wherein it is observed that in view of the Government Circular dated 8th April 1989 one percentage deficit is permissible and the explanation of the petitioner was accepted, the order of confiscation was cancelled and the revision application was allowed.

4. Mr. Tushar Mehta has produced on record the Circular dated 7th October 1993 wherein the Government, in its instructions dated 1st January 1988, in clause 5, has observed that in view of the Circular of the same Department dated 20th October 1981 the instructions issued by the Oil Companies and permissible variation of stock should be accepted by the Inspecting Officers and as far as possible they should abide by the deficit as per the instructions of Oil Companies. It is also stated that if any serious irregularity is found, then only the stock should be confiscated. Mr. Mehta has drawn my attention to the instructions contained in Circular dated 30.9.1981 wherein it has been observed that while fixing a limit to such differences the Oil Companies felt that so long as the difference is within plus or minus 4% of the underground tankage capacity plus 1% of the stock

sold between the two inspections in the case of MS and plus 0.25% of the stock sold between the two inspections in the case of HSD, the difference may be deemed to be within permissible limits.

5. In view of the above different Circulars and instructions issued by the Department, it is found that 1% difference is permissible in case of petrol pump. Mr. Mr Mehta submitted that in the case of the petitioner the deficiency which was found by the authority is more than 0.60%, but less than 1%. Therefore the contention of Mr.Mehta deserves to be accepted. Learned counsel for the respondent is unable to assail the submission canvassed on behalf of the petitioner.

6. Mr. Mehta has also relied upon a decision of the Supreme Court in the case of N. Nagendra Rao & C. Vs. State of Andra Pradesh, reported in AIR 1994 SC 2663, wherein it is held that the language of the section and its setting indicate that every contravention cannot entail confiscation and that a trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated on a par with technical violations such as failure to put up the price list, etc. or even discrepancies in stock.

7. Mr. Mehta has further submitted that the State Government has accepted the contention of the petitioner in revision application filed by the petitioner being Revision Application No.87/2000 dated 11th June 2002, whereby the order of confiscation was cancelled.

8. Considering the guidelines and the Circular issued by the Government from time to time and more particularly the fact that the authority has not found any adulteration or any other illegalities on the part of the petitioner, the deficiency in the stock of petrol is a breach of too technical nature for which confiscation order is not just and proper. This is not a case where an order of confiscation can be passed, especially when the government itself has issued directions to the lower authority and the State Government has accepted the contention of the petitioner and modified the order of confiscation. Therefore, the order of confiscation requires to be set aside when the petitioner has not committed any malpractice or irregularities.

9. In the premises aforesaid, the petition is allowed. The order dated 11th June 1996 at Annexure-A is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

ar